THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.28048 of 2005

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01.02.2006

Between:

M.Srimannarayana, S/o.Bhadraiah

And another

... Petitioners

AND

The Veeravalli Gram Panchayat, Bapulapadu Mandal, Krishna District

And another

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.28048 of 2005

ORDER:

The two petitioners are aggrieved by the notice dated 23.12.2005 issued by the first respondent Gram Panchayat. They filed the present writ petition seeking a writ of Mandamus to set aside the notice as illegal and arbitrary. It is the case of the petitioners that in the auction conducted by the Krishna District Cooperative Marketing Society Limited on 02.7.2004, they allegedly purchased land admeasuring Acs.1.39 with rice shed in R.S.Nos.367/3 and 367/4 (New R.S.Nos.368/1 and 368/2) and an extent of Acs.0.48 in R.S.No.368/5 of Veeravalli village. The first respondent herein issued a notice dated 23.12.2005 (impugned in this writ petition) calling upon the petitioners to show cause as to why the illegal constructions made by the petitioners on the eastern side of the petitioners' property should not be removed and why action should not be taken against them by claiming damages for causing loss to the panchayat property and closing the drain. The petitioners were asked to remove the illegal construction and they were also informed that if they failed to do so, Gram Panchayat would take appropriate action. The petitioners submitted explanation on 27.12.2005 through their lawyer and as no orders are passed by the Gram Panchayat, they filed the present writ petition

alleging that the Gram Panchayat is bent upon to demolish the wall after 30.12.2005.

At the stage of admission itself, a counter affidavit is filed by the Panchayat Secretary of Veeravalli Gram Panchayat denying various allegations and further stating that the eastern boundary of the property purchased by the petitioners from the Krishna District Cooperative Marketing Society Limited is shown as Gram Panchayat road and that on the road margin there is an existing drain for outflow of drain water. It is further alleged that the petitioners occupied Gram Panchayat road highhandedly by closing the drain channel, though they gave undertaking that they would not encroach the existing road of the Gram Panchayat. Therefore, the Gram Panchayat passed resolution to remove the obstruction made by the petitioners and accordingly the impugned notice was issued directing the petitioners to remove the obstructions. It is also averred that based on the representation sent by the Sarpanch, Mandal Surveyor conducted survey pointing out that the petitioners occupied the existing road by closing the drain. Based on which, the resolution was passed.

Learned Counsel for the petitioners mainly raised two contentions. According to him, whenever the encroachment on the road is alleged, it is mandatory on the part of the Gram Panchayat to issue notice to the persons, who allegedly encroached upon the street and conduct a survey for fixing the outer-line of the street. No survey was conducted, as contemplated under the Rules promulgated vide G.O.Ms.No.555, dated 03.12.1999, and therefore, the impugned notice is unsustainable. Secondly, he would urge that the action of the first respondent is *mala fide*, in that the petitioners sent a legal notice through their lawyer on 07.12.2005 demanding diversion of stagnated drain water on the eastern and northern sides of the petitioners' property, and as a counter blast, the first respondent issued notice making all the false allegations. The learned Counsel for the petitioners, however, does not dispute that though the petitioners have submitted the explanation on 27.12.2005 through their lawyer, the Gram Panchayat has not taken any action.

Elaborate submissions are made by the learned Counsel for the petitioners and the learned Standing Counsel for the Gram Panchayat. But, having regard to the fact that the Gram Panchayat has not yet passed orders on the representation of the petitioners, it would not be proper to express any opinion on the questions raised. The learned Standing Counsel for the first respondent has placed before this Court a copy of the report of the Mandal Surveyor in support of the contention that a survey was conducted. The same would show that the petitioners are found to be in possession of land admeasuring Acs.1.99 in survey Nos.367 and 368 of Veeravalli village and the same was surveyed in the presence of the Divisional Cooperative Officer. It was found that the boundaries were recorded mistakenly and the encroachments in the sub-divisions in R.S.No.368/5 were not recorded in the document under which the property was transferred to the petitioners. The survey report also adverts to the existence and position of the road connecting old National Highway in the village and bypass road connected newly. Therefore, the Gram Panchayat can still consider the contentions of the petitioners with reference to survey report by giving opportunity to the petitioners to file objections to survey report. This exercise may be completed within a period of two weeks from the date of

receipt of a copy of this order and if any adverse order is passed by the Gram Panchayat the petitioners can avail the remedy of appeal before the District Panchayat Officer under Section 128 of A.P. Panchayat Raj Act, 1994.

The writ petition is accordingly disposed of, directing as above. No costs.

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(**V.V.S.RAO, J**)

February 01, 2006.

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